United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

768

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 23618

TYRONE P. WATERS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

United States Court of Appeals
for the District of Columbia Circuit

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APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

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December 31, 1969

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	
STATE OF JURISDICTION	1
REFERENCE TO RULINGS	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	7
ARGUMENT	7

CITATIONS

	Page
Youth Corrections Act, 18 U.S.C. 5001 *et seq.*	1,2,4,5,7, 8,9,10
Young Adult Offenders, 18 U.S.C. 4209	9

QUESTION PRESENTED

When a youth offender, age 19, pleads guilty to a criminal charge, and the trial Court finds that said youth offender would benefit by confinement in a youth institution, may the Court disregard the Youth Corrections Act, 18 U.S.C. 5010(d), and sentence Defendant under the applicable statute?

Not previously before Court.

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

TYRONE P. WATERS, Appellant,	)	
v.	)	No. 23618
UNITED STATES OF AMERICA, Appellant.	)	

BRIEF FOR APPELLANT

STATEMENT OF JURISDICTION

This is an appeal from a sentence of 4 to 12 years for robbery (D.C. Code, Section 2901) after a trial before the Honorable Leonard P. Walsh in the United States District Court for the District of Columbia, at the end of which trial Defendant plead guilty as charged. Appellant is proceeding in forma pauperis pursuant to an order of the United States District Court dated March 26, 1968. The Youth Corrections Act is applicable to the District of Columbia (18 U.S.C. 5024-5).

STATEMENT OF THE CASE

This appeal relates only to the sentence imposed on Appellant, not to the conviction. Appellant, in fact, pleaded guilty to the charges against him. However, in sentencing Appellant, the Court necessarily gave consideration to many

Referred to Judge
Feature 4/21/69
Memorandum and Order 9/23/69

matters which are not evidentiary in character. The court had before it a Probation Officer's report, which is outside the record and has not been made available to Appellant. The Court had before it also the report from the Superintendent of the Youth Center, Lorton, Virginia, made pursuant to Appellant's motion under the Youth Corrections Act, 18 U.S.C. 5010(e). This report has not been included in the record, and a request by counsel for Appellant to the Probation Officer for permission to examine this report prior to sentencing was denied.

Appellant submits that a statutory report, made under the authority of 18 U.S.C. 5010(e), in response to a formal motion by Appellant, should be incorporated in the record of a proceeding. This report by the Superintendent of a youth institution recommending for or against treatment in such institution has a materiality and relevance similar to a report of the Legal Psychiatric Service or of a mental institution on matters of competency. The Court should rule that the report under 18 U.S.C. 5010(e) must be filed in the formal file of any youth offender who requests such an examination.

The facts of the case briefly are as follows: Defendant was arrested on several charges of robbery and armed robbery. Defendant was 18 at the time of the robbery and was in the company of an older man. According to the testimony, the older

man was in his mid-twenties, quite large (about 6'2" or 6'3") and he was carrying a gun. Appellant, then a teenager, is about 5'10' and slight in build. The larger and older man was in complete charge of the robbery, and Appellant did whatever the older man told him to do. The only roughness attributed to Appellant was that he allegedly held a man by his shirt front, knocking off his clip-on necktie, and that Appellant supposedly gave this man a push, impelling him down the basement stairs, when the group,who were in the office, were sent into the basement while the robbers fled. Appellant testified that he was afraid of the big man.

Prior to trial, Appellant offered to plead guilty to one count of robbery if other counts of robbery and assault with a dangerous weapon were dismissed. It is routine procedure in U.S. District Court to allow a Defendant this privilege when he pleads guilty. This was Appellant's first felony charge, although he had a prior misdemeanor conviction for destroying private property.

The Court urged the U.S. Attorney to accept Appellant's plea, but the U.S. Attorney declined to accept the plea, on the ground that the co-defendant was unwilling to plead guilty, and consequently it was no great convenience to the Government to accept Defendant's plea. It is submitted that this denial, to

Defendant, of a privilege that is routinely granted to accused persons, was unreasonable and unfair. The U. S. Attorney's office thus exerted pressure on Defendant in order to exert pressure on the co-Defendant in an effort to obtain a plea from the co-Defendant. But the co-Defendant denied his guilt and the Appellant assured counsel that the co-Defendant was not the big man who had committed the robbery. As it turned out, the three-day trial was a waste of everyone's time, since, at the end of the trial, Appellant pleaded guilty, as he had been continually willing to do, and the Court dismissed the charges against the co-Defendant for insufficient evidence.

Following the plea of guilty, Defendant moved, pursuant to 18 U.S.C. 5010(e) for a pre-sentence commitment for observation at the Youth Center at Lorton, Virginia. He pointed out, in his motion, that he was a youth offender within the meaning of the Youth Correction Act, that he needed the kind of training available at the Youth Center, that this was his first felonyy conviction, and that he was subject to harassment by the older prisoners. See Motion filed January 23, 1969.

Indeed the harassment by older prisoners was a matter that had arisen on several occasions prior to trial. The case had been set for trial earlier, but when Appellant was brought to Court, the case was continued because of Appellant's condition. Appellant was bandaged, scratched, and generally battered

about the face. Appellant advised counsel, who advised the Court, that an older prisoner at the D.C..jail had attempted a sexual assault on Appellant, and when Appellant resisted he had been beaten. Similarly, at the time of the trial, Appellant was being confined in "the hole" -- solitary confinement -- for being a trouble-maker, that is, for resisting sexual assaults by older men.

The court on January 31, 1969, granted Appellant's motion and ordered Appellant committed to the Youth Center. The Court's order required that a report be made to the Court as to whether he would benefit from treatment under Section 5010(b) or (c) of the Youth Correction Act.

Appellant's family found a vast change in Appellant's attitude and responses to confinement at the Youth Center. He was interested in the training programs, got along well with his fellow inmates, and was particularly interested in training as a barber and in working on the Youth Center boxing program. It is counsel's understanding that the Youth Center filed a report recommending treatment under Section 5010 (b) or (c). However, as pointed out above the Court authorities treat this report as a privileged document not available to defense counsel.

On April 25, 1969, the Court imposed sentence on Appellant of 4 to 12 years for robbery and 3 to 9 years for assault.

In imposing sentence, the Court recommended that the Appellant be placed in a youth institution.

On April 29, 1969, Appellant filed a Motion for Reconsideration of Sentence, requesting that he be sentenced under the Youth Corrections Act. While this Motion was pending, the Appellant was transferred from the Youth Center to Lorton Penitentiary, despite the Court's recommendation for his confinement in a youth institution. When the Motion came on for hearing on May 23, 1969, Appellant's mother testified how much improved Appellant's frame of mind had been at the Youth Center, how optimistic all of his family had been for his rehabilitation, and how depressed Appellant and his family were at his transfer to the adult prison at Lorton. She testified that he had had constant trouble when confined with older prisoners, and she expressed the hope that nothing would happen to him at Lorton.

The Court took the motion under advisement, and six days later, on May 29, 1969, Appellant was severely beaten with a lead pipe by an older prisoner at Lorton.

Appellant was on the edge of death for about two weeks. In the intervening months Appellant has recovered partially from this beating, and is presently at St. Elizabeth's Hospital undergoing neurological examination. Appellant has suffered permanent impairment of his eyesight, substantial amnesia, and he is only slowly regaining his physical coordination.

On September 23, 1969, the Court denied Appellant's Motion for Reconsideration of Sentence.

SUMMARY OF ARGUMENT

Appellant contends that when a Court finds that a youth offender will benefit by confinement in a youth institution, the Court is required to sentence such a youth offender under the Youth Corrections Act, and that to sentence Appellant under the applicable criminal statute was an abuse of discretion.

ARGUMENT

Appellant is a youth offender within the meaning of the Youth Offender Act. (The Motion for Reconsideration of Sentence incorrectly states Appellant's age as 19 at the time of the robbery; Appellant was in fact only 18 at that time.) The Youth Corrections Act gives a court two options, paragraphs (b) and (c) which are wholly discretionary with the Court. Section 5010(b), when read in conjunction with Section 5017, provides for a maximum confinement of 4 years and a maximum period of supervision of 2 additional years. Secion 5010(c) allows a Court to fix longer periods of confinement and supervision. A choice between these two commitments is wholly within the sentencing Court's discretion.

Section 5010(d) of the Youth Corrections Act gives the sentencing Court an additional option, but there is a clear

statutory condition precedent to the exercise of this option. Section 5010(d) of the Act provides that the Court may sentence a youth offender under any other applicable penalty provision "if the Court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c)." (Emphasis added.) Appellant submits that the Court below expressly found that Appellant would benefit from treatment under the Youth Corrections Act, and consequently could not exercise the option established by 5010(d).

Appellant was in the custody of the Youth Center at Lorton, Virginia for about two months for observation pursuant to Section 5010(e) of the Act. The authorities at the Youth Center filed a report with Court, finding that Appellant would benefit from treatment under the Youth Corrections Act. The sentencing Court expressly recommended that Appellant be committed to a youth institution (see Memorandum and Order filed September 23, 1969, second paragraph).

Thus, the Court could not make the finding that the Appellant, a youth offender, will not derive benefit from treatment under subsection (b) or (c). Such a finding is required clearly by the statute as a precedent to the sentencing of a youth offender under another applicable statute.

The statutory scheme created by Congress establishes four categories of offenders: Juveniles (under 18), youth

offenders (18 to 22), young adult offenders (22 to 26) and adult offenders. Each category other than adult offenders had distinctive statutory procedures applicable to offenders in that category: Juveniles, 18 U.S.C. 5031-7; youth offenders, 18 U.S.C. 5001-26; young adult offenders, 18 U.S.C. 4209.

Where a convicted person is a young adult offender, i.e., between the ages of 22 and 26, the sentencing Court has full discretion to sentence such person under the applicable criminal statute or under the Youth Corrections Act, 18 U.S.C. 4209. That provision states that a Court "may," but is not required to, sentence a young adult under the Youth Corrections Act.

When 18 U.S.C. 4209 is read in contrast to the language of Section 5010 (d) it is readily apparent that Congress was not giving the Court the same discretion as regards a youth offender as was given regarding a young adult.

Section 18 U.S.C. 4209 states that a young adult may be sentenced under the Youth Corrections Act if the Court finds that he will benefit by such treatment. Section 5010(d) states that a youth offender may be sentenced under another applicable penalty provision, if the Court finds that he will <u>not</u> benefit by treatment under the Youth Corrections Act.

The Court must find that a youth offender will not benefit by treatment under the Youth Corrections Act before it can sentence him for robbery, for example. No finding was made in this case that Appellant will not benefit from sentencing under the Youth Corrections Act. No such finding could be made. Appellant was young; he was no hardened criminal; he needed education and training of the kind available in youth institutions; he had severe difficulties in the environment of an adult penitentiary, and he developed an affirmative attitude toward rehabilitation in the environment of a youth institution. The court expressly recommended that Appellant be committed to a youth institution.

Under these circumstances, Appellant submits that it was unlawful, and an abuse of discretion, to sentence Appellant under the applicable robbery and assault statutes.

For the foregoing reasons Appellant requests that his sentence be set aside and the case remanded for sentence under the Youth Corrections Act.

Respectfully submitted,

Eugene E. Threadgill

Eugene E. Threadgill, Attorney for
Appellant by appointment of this Court.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the United States Attorney for the District of Columbia this _____ day of _____.

_____
Eugene E. Threadgill